

REC-117

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, DC 20554

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011-117

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Newton Community School District)	File No. SLD-165225
Newton, Iowa)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: December 19, 2001

Released: December 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Newton Community School District (Newton), Newton, Iowa, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Newton seeks review of SLD's denial of one of its Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from James Pederson, Newton Community School District, to Federal Communications Commission, filed March 6, 2001 (Request for Review).

² See *id.* Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The Commission's rules provide that eligible schools and libraries with pre-existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.⁷ In such a case, the service request need not be subjected to competitive bidding. However, as described in the instructions for completing FCC Form 470, services received solely pursuant to a tariff do not constitute a "pre-existing contract," and thus must be re-bid each year.⁸ Further, even existing contracts must have been reported on an FCC Form 470 either in the year of the funding request or in a prior funding year.⁹ The applicant's FCC Form 471 must demonstrate compliance with the competitive bidding rules by specifying, for each funding request, the FCC Form 470 in which the service was either posted for competitive bidding or reported as a pre-existing contract.¹⁰

4. Newton seeks review of the denial of Funding Request Number (FRN) 322733, which sought tariffed telecommunications services for Funding Year 3 (July 1, 2000 to June 30,

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Order on Reconsideration*).

⁸ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Form 470 Instructions), at 7. See also *Fourth Order on Reconsideration*, 13 FCC Rcd at 5441, para. 217; *Federal-State Joint Board on Universal Service*, Tenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 5983 (1999).

⁹ See SLD Website, Reference, Frequently Asked Questions, <<http://www.sl.universalservice.org/reference/faq.asp#1>>.

¹⁰ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 19.

2001).¹¹ It cited a Funding Year 3 FCC Form 470 that requested only internal connections.¹² The record demonstrates that Newton made no request for telecommunications services in its Funding Year 3 FCC Form 470.¹³ SLD issued a Funding Commitment Decision Letter, denying FRN 322733 on the grounds that “[t]he 470 cited did not include service of this type, therefore it does not meet the 28 day competitive bidding requirement.”¹⁴

5. Newton appealed to SLD, asserting that it had not checked the item on the FCC Form 470 indicating a request for tariffed telecommunications services because it had a pre-existing contract for those services with GTE Midwest Inc.¹⁵ It attached copies of a contract with GTE Midwest Inc. that terminated on December 31, 1998 and a contract extension from July 1, 1999 to June 30, 2000.¹⁶ It also attached copies of Funding Year 1 and Funding Year 2 FCC Form 470s that it claimed had posted these pre-existing contracts.¹⁷

6. On February 5, 2001, SLD denied the appeal.¹⁸ It asserted that FRN 322733 (a Funding Year 3 request) cited a Funding Year 2 FCC Form 470, and that, because tariffed telecommunications had to be rebid each year, the Funding Year 2 FCC Form 470 did not satisfy the competitive bidding requirement.¹⁹ It further found that the contracts submitted had expired prior to Funding Year 3 and therefore did not demonstrate the existence of a pre-existing contract that could support the request.²⁰ Newton then filed the pending Request for Review, repeating its arguments and again attaching copies of the contracts and FCC Form 470s from Funding Year 1 and Funding Year 2.

7. On review of the record, we find that the FCC Form 470 cited was not a Funding Year 2 FCC Form 470, as asserted by SLD in the Administrator’s Decision on Appeal. Our review confirms that the cited FCC Form 470, App. No. 680940000253486, is a Funding Year 3

¹¹ Request for Review; FCC Form 471, Newton Community School District, filed January 9, 2000, at 3.

¹² *Id.*; FCC Form 470, Newton Community School District, App. No. 680940000253486, filed November 18, 1999 (Year 3 Form 470), at 2.

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Pederson, Newton Community School District, dated April 14, 2000, at 6.

¹⁵ Letter from James Pederson, Newton Community School District, to Schools and Libraries Division, Universal Service Administrative Company, filed April 28, 2000 (Appeal to SLD), at 1.

¹⁶ *Id.*, Attachment.

¹⁷ *Id.*, Attachment.

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Pederson, Newton Community School District, dated February 5, 2001 (Administrator’s Decision on Appeal).

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1-2.

FCC Form 470.²¹ However, we nevertheless find that SLD's decision in the Funding Commitment Decision Letter was correct. Specifically, SLD correctly found that FRN 322733 sought discounted tariffed telecommunications in Funding Year 3 and that the cited Funding Year 3 FCC Form 470 did not support such services.²² We therefore affirm the denial of funding on that basis.

8. The FCC Form 471 Instructions for Funding Year 3 specified that in the field of each funding request provided for the contract number, "[i]f this is a tariffed service -- a telecommunications service *not covered by a written, signed contract* but instead purchased at prices ('rates') regulated by your state regulatory commission and/or the FCC -- place a T"²³ Newton did place a T in the contract number field for FRN 322733, indicating that it was receiving tariffed services not covered by a written contract.²⁴ Conversely, nothing indicated reliance on a pre-existing contract. There was no contract award date or contract termination date provided. Further, the cited FCC Form 470 was for Funding Year 3, and posted requests for new services, not services provided pursuant to a pre-existing contract.²⁵ Finally, the application attachment addressing the request gave no indication that the service was pursuant to a pre-existing contract.²⁶ Based on this record, SLD correctly found that Newton was seeking tariffed telecommunications service that it had not posted.

9. We agree with SLD that the contracts that Newton submitted with its Appeal to SLD does not support its Funding Year 3 request, because even the contract extension terminated prior to Funding Year 3.²⁷ However, we also find that evidence of a pre-existing contract submitted on appeal could not in any case warrant relief. Evidence is inadmissible on appeal to correct data included in the original application.²⁸ Here, as noted above, FRN 322733 specified that it was seeking tariffed services not supported by a contract.²⁹ Thus, evidence to demonstrate that the service is supported by a contract is not admissible on appeal.

²¹ See Year 3 Form 470.

²² See *supra* nn. 12, 13.

²³ Form 471 Instructions, at 20 (emphasis added).

²⁴ FCC Form 471, Newton Community School District, filed January 9, 2000, at 3.

²⁵ *Id.* at 3.

²⁶ *Id.*, Attachment 3.

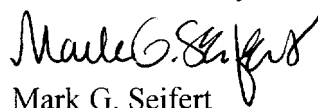
²⁷ See Request for Review, Attachment.

²⁸ *Request for Review by Richland Parish School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-127412, CC Dockets No. 96-45 and 97-21, Order, DA 01-2018, para. 7 (Com. Car. Bur. rel. August 28, 2001).

²⁹ FCC Form 471, Newton Community School District, filed January 9, 2000, at 3.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Newton Community School District, Newton, Iowa, on March 6, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert", written in a cursive style.

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau